

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:

CASE NO. 19-34028

Suzana T. Novak

CHAPTER 7

Debtor.

JUDGE MARY ANN WHIPPLE

MOTION OF CITIZENS BANK, N.A.,
FOR RELIEF FROM STAY AND
ABANDONMENT

7795 Sand Beach Rd., Oak Harbor OH 43449

Citizens Bank, N.A., (the "Movant") moves this Court, under Bankruptcy Code §§ 361, 362, 363, and other sections of Title 11 of the United States Code, and under Federal Rules of Bankruptcy Procedure 4001 and 6007 for an order conditioning, modifying or dissolving the automatic stay imposed by Bankruptcy Code § 362 AND FOR ABANDONMENT OF PROPERTY UNDER BANKRUPTCY CODE § 554.

MEMORANDUM IN SUPPORT

1. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). The venue of this case and this motion is proper under 28 U.S.C. §§ 1408 and 1409.
2. On September 12, 2017 Debtor obtained a loan from Franklin America Mortgage Company in the amount of \$256,155.00. Such loan was evidenced by a Note dated September 12, 2017 (the "Note"). Movant is now the owner and holder of the subject Note. A copy of the Note is attached as Exhibit A.

3. To secure payment of the Note and performance of the other terms contained in it, Debtor Suzanne Taryn Novak, A Single Woman, executed an Open-End Mortgage in favor of MERS as nominee for Franklin America Mortgage Company on September 12, 2017 ("Security Agreement"). The Security Agreement granted a lien on the property located at 7795 Sand Beach Rd., Oak Harbor OH 43449 owned by Debtor (the "Collateral"). The Collateral is more fully described in the Security Agreement attached here as Exhibit B.

OR

☐ contained in the Note, attached as Exhibit A.

4. The lien created by the Open-End Mortgage was duly perfected by:

☒ Filing of a Mortgage on September 13, 2017, 201700270380 and Assignment to Movant on October 24, 2018, 201800280537, by the Ottawa County Recorder.

☐ Filing of the UCC-1 Financing Statement in the office of

☐ Notation of the lien on the Certificate of Title.

☐ Other (state with particularity)_____

A copy of the recorded Open-End Mortgage, UCC-1 Financing Statement, Certificate of Title or other document, as applicable, is attached as Exhibit B. Based on title work obtained to initiate a foreclosure proceeding and attached to the foreclosure complaint as Exhibit C, the lien is the first lien on the Collateral.

5. The entity in possession of the original Note as of the date of this Motion is Citizens Bank, N.A.

6. The entity servicing the loan is: Citizens Bank, N.A.

7. The Note was transferred, as evidenced by the following:

a. If the Collateral is real estate:

i. Under Uniform Commercial Code § 3-203(a) as applicable under state law in effect where the property is located, from the original lender:

☒ By blank endorsement

OR

☐ By endorsement payable to

OR

☐ By allonge attached to the Note payable to _____

OR

☐ By blank allonge, attached to the Note.

OR

☐ The Note is not endorsed to the Movant, or is not endorsed in blank with an allegation that the Movant is in possession of the original Note. The factual and legal basis upon which the Movant is entitled to bring this motion is (explain with particularity and attach supporting documentation):

OR

☐ By endorsement on the Note or by allonge attached to the Note, through a power of attorney. If this box is checked, a copy of the power of attorney is attached as Exhibit <_>. Explain why it provides Movant the authority to endorse the Note:

<ii. Under Uniform Commercial Code §3-203(a) as applicable under state law in effect where the property is located, from the <FIRST TRANSFEREE> to <_____

> [ADD ADDITIONAL TRANSFER SECTIONS AS APPROPRIATE. THE LAST TRANSFEREE MUST BE THE MOVANT].>

<iii. A court has already determined that Movant has the ability to enforce the Note with a judgment dated <INSERT DATE OF JUDGMENT> in the <INSERT NAME OF COURT>. A copy of the judgment is attached at Exhibit <_?>

<iv. Other _____ - [explain].>

b. If the Collateral is not real estate (check one):

☐ N/A.

OR

☐ From the original lender to <FIRST TRANSFEREE> by <STATE METHOD OR DOCUMENT EFFECTING TRANSFER> [ADD ADDITIONAL TRANSFER SECTIONS AS APPROPRIATE. THE LAST TRANSFEREE MUST BE THE MOVANT.]

8. The Security Agreement was transferred as follows (check one):

☒ Assignment to Movant on October 24, 2018, as 201800280537, Ottawa County Recorder.

OR

☐ Under Uniform Commercial Code §3-203(a) as applicable under state law in effect where the property is located, from the <FIRST TRANSFEREE> to <_____

> [ADD ADDITIONAL TRANSFER SECTIONS AS APPROPRIATE. THE LAST TRANSFEREE MUST BE THE MOVANT].>

9. The value of the Collateral is \$245,460.00 This valuation is based on the valuation conducted by the Ottawa County Auditor.

10. As of December 30, 2019, there is currently due and owing on the Note the outstanding principal balance of \$252,788.74, plus interest accruing thereon at the rate of 4.00% per annum

from July 1, 2018 as described in more detail on the worksheet. The total provided in this paragraph cannot be relied upon as a payoff quotation.

11. The amount due and owing on the Note as set forth in paragraph 10 DOES NOT include a credit for the sum held in a suspense account by the Movant. The amount of the credit is N/A.

12. Other parties known to have an interest in the Collateral besides the debtor(s), the Movant, and the trustee are (check all that apply):

☒ The Unknown Spouse, if any, of Suzana T. Novak of 7795 Sand Beach Rd., Oak Harbor OH 43449

13. The Movant is entitled to relief from the automatic stay under Bankruptcy Code §362(d) for these reason(s) (check all that apply):

☐ Debtor has failed to provide adequate protection for the lien held by the Movant for these reasons:
<EXPLAIN>

☐ Debtor has failed to keep the Collateral insured as required by the Security Agreement.

☐ Debtor has failed to keep current the real estate taxes owed on the Collateral.

☒ Debtor has failed to make periodic payments to Movant. Outstanding payments owed

are 17 totaling \$35,603.17. The total provided in this paragraph cannot be relied upon as a reinstatement quotation.

☐ Other cause (set forth with specificity):

14. Movant has completed the worksheet, attached as Exhibit C.

15. Movant is entitled to an order directing the trustee to abandon the Collateral for the for these reasons (check all that apply):

☐ The Collateral is burdensome to the estate because

☒ The Collateral is of inconsequential value and benefit to the estate because upon liquidation of the Collateral no proceeds will remain for the benefit of the estate.

WHEREFORE, Movant prays for an order from the Court:

(a) granting Movant relief from the automatic stay of Bankruptcy Code § 362 to permit Movant to proceed under applicable non bankruptcy law; <AND>

(b) AUTHORIZING AND DIRECTING THE CHAPTER 7 TRUSTEE TO ABANDON THE COLLATERAL UNDER BANKRUPTCY CODE §554.

Respectfully submitted,

/s/ Johna M. Bella
Johna M. Bella (0034567)
Goranson, Parker & Bella
405 Madison Avenue, Suite 2200
Toledo, Ohio 43604
Telephone: 419-244-9500
Telecopier: 419-244-9510
jbell a@gpblaw.com
Attorney for Movant

CERTIFICATE OF SERVICE

The undersigned certifies that on January 14 2020, a true and correct copy of the foregoing Motion for Relief from Stay and Abandonment of Citizens Bank, N.A., was served via the Court's electronic case filing system on the following who are listed on the Court's Electronic Mail Notice List:

- Patricia A. Kovacs patricia.a.kovacs@gmail.com, r57796@notify.bestcase.com
- Ericka S. Parker Trustee esparker@sbcglobal.net, oh04@ecfcbis.com
- United States Trustee (Registered address)@usdoj.gov

and by regular U.S. mail, postage prepaid, to:

Suzana T. Novak
7795 Sand Beach Rd.
Oak Harbor OH 43449

Unknown Spouse of Suzana T. Novak
7795 Sand Beach Rd.
Oak Harbor OH 43449

American Express National Bank
c/o Zwicker & Associates, PC
80 Minuteman Road
P.O. Box 9043
Andover, MA 01810-1041

/s/ Johna M. Bella
Johna M. Bella (0034567)